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FM AMCONSUL GUANGZHOU
TO RUEHC/SECSTATE WASHDC 0861
INFO RUEHGZ/CHINA POSTS COLLECTIVE 0230
RUEHBJ/AMEMBASSY BEIJING 0670
RUEHCN/AMCONSUL CHENGDU 0167
RUEHHK/AMCONSUL HONG KONG 0233
RUEHG/AMCONSUL SHANGHAI 0168
RUEHSH/AMCONSUL SHENYANG 0178
RUEAUSA/DEPT OF HHS WASHINGTON DC 0017
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC 0020
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC 0084
RUEATRS/DEPT OF TREASURY WASHINGTON DC 0132
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC 0015
RUCNFB/FBI WASHINGTON DC 0014
RUEAIIA/CIA WASHDC 0221
RUEKJCS/DIA WASHDC 0217

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SENSITIVE
SIPDIS

State for EAP/CM - SFlatt; EEB - JUrban, TMcGowan
State for INL - JVigil
USTR for China Office - AWinter; IPR Office - RBae; and OCG -
SMcCoy
Commerce for National Coordinator for IPR Enforcement
Commerce for CISrael
Commerce for MAC 3204/ESzymanski
Commerce for MAC 3043/McQueen
Commerce for MAC 3042/SWilson, JYoung
Commerce for NWinetke
LOC/Copyright Office - MPoor
USPTO for Int'l Affairs - LBoland, EWu
DOJ for CCIPS - MDubose
DOJ for SChebtob
FTC for Blumenthal
FBI for LBryant
DHS/ICE for IPR Center - DFaulconer, TRandazzo
DHS/CBP for IPR Rights Branch - GMcCray, PPizzeck
ITC for LLevine, LSchlitt

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [ECON](#) [PGOV](#) [CH](#)

SUBJECT: South China IPR: Rights Holders Reiterate Need for
Sustained Engagement

REF: A) 2008 GUANGZHOU 720, B) 2008 GUANGZHOU 132, C) 2007 GUANGZHOU
1241

¶1. (SBU) Summary: American brand owners said Guangdong Province remains the global source for most counterfeit and infringing products during an August 11 introductory meeting with the Consul General. Executives highlighted continued concerns about weak IPR enforcement in South China and suggested additional opportunities for USG engagement to help address some of the enforcement problems.

They believe that high-level business and government support for the U.S. Chamber of Commerce's planned Guangdong IPR Forum in October would be an effective opportunity to engage with senior provincial and municipal leaders and help focus local attention on the need for solutions to IP infringement problems. Rights holders reiterated their suggestion that incoming administration senior IP officials visit IPR hotspots like south China as early as possible to see problems first-hand. Rights holders raised many of the same concerns about the impact of IPR infringement on society and the economy of south China that we raise with local officials. Continuing coordination will help ensure that we're sending a unified message. End summary.

Enforcement Problems Have Not Abated

¶12. (SBU) Representatives of Cisco, Apple, Mattel, Nike and Procter and Gamble each described recent developments and continuing challenges in protecting intellectual property rights in south China during an August 11 meeting with the Consul General. In addition to reiterating long-standing concerns such as the need for local enforcement agencies to allocate more personnel and resources to IP issues (ref A), rights holders also reported an increase in transshipment cases in which seized products were manufactured in south China but transited other jurisdictions including Hong Kong and the Middle East before arriving in markets in the United States, Europe and elsewhere. One business representative said 30% of his company's U.S. product seizures appeared to have originated in Hong Kong, although further investigation revealed that infringing products were produced in south China and transshipped.

¶13. (SBU) Rights holders also complained that enforcement authorities' unwillingness to take action against retail violators of IP rights is a continuing problem. Local protection of violators has continued in cases where local branches of China's Administration of Industry and Commerce (AIC) refuse U.S. business requests to raid "notorious markets," shopping malls and other large-scale retail sites that sell large quantities of counterfeit goods. Other enforcement officials also refuse to accept cases involving Internet sales of counterfeit and infringing products on the grounds that purchases of evidence by rights holders and their contracted investigation agencies constitute "entrapment." Rights holders suggested that the U.S. Government's annual 301 process should designate additional "notorious markets" as a way to increase pressure on China to take action in these retail cases, and Internet-related local enforcement bodies might benefit from

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training with FBI's Computer Crime and Intellectual Property Section (CCIPS) and other training in order to improve enforcement cooperation.

¶14. (SBU) Lax enforcement against production and distribution offenders is also a major problem, according to brand owners. One long-standing issue is refusal of local enforcement agencies to destroy or at least trace and verifiably liquidate machinery used for producing counterfeit and infringing products, as well as the printing machines used to produce packaging and other promotional materials. Without this change, rights holders said violators' machines frequently resume operations within days of seizures and enforcement actions are rendered meaningless. (Note: Some machines in question are valued at US\$1 million or more. End Note.) Another problem in certain jurisdictions occurs when local authorities conduct a raid and seize infringing products but subsequently refuse to issue seizure reports that are necessary to escalate the case to civil or criminal prosecution. One business representative said this situation had occurred more frequently in the last year because of protection of local violators during the global economic downturn.

Strong Support for IP Forum in South China

¶15. (SBU) Business representatives pledged their best efforts in attracting participation of executives from the their U.S. and Asia headquarters at the U.S. Chamber's South China IP Forum that is planned for late October 2009. Rights holders expressed optimism that high-level participation from Washington-based U.S. officials and important U.S. business leaders could attract key provincial and municipal leaders from Guangdong and the Pearl River Delta, the origin of most American companies' greatest IP infringement concerns. Rights holders told the Consul General that such a conference could help address many specific IP-related problems and help increase government transparency across the board, which is a fundamental weakness of China's IP enforcement regime.

USG Role Improving IPR Protection in South China

¶16. (SBU) Participants reiterated their 2008 call for continued engagement with local authorities on IP issues to help improve IPR protection in this critical region (ref A). Rights holders

emphasized that regardless of format or participants, the most effective U.S. government contribution to south China IP enforcement in 2009 would be high-level USG visits, especially by incoming administration IP officials, to Guangdong and Fujian provinces to see the problems first-hand. The visits could be independent of a specific event, or could be tied to routine bilateral meetings like the JCCT IPR Working Group.

17. (SBU) Brand owners also encouraged continued USG support for Chinese government outreach including a planned delegation from the General Administration of Quality Supervision, Inspection and

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Quarantine (AQSIQ) that will visit the United States in October and feature visits to Silicon Valley and other key IP-related sites. Business representatives said they are encouraged by increased brand protection activities by growing Chinese brands including Huawei, Lenovo and Lining (sporting goods) in key south China problem areas, and USG engagement can help foster broader support for improved IPR protection.

Comment - A United Front

18. (SBU) U.S. rights holders made many of the same arguments for increasing IPR enforcement in China that we make in our efforts to convince the public and their local government representatives that improved IPR protection is preferable to "full employment" by factories that produce infringing and counterfeit products. Such factories do not pay local taxes, nor do they ensure legal and ethical protections for their workers including contributing to social security or meeting minimum wage requirements. Infringers damage local society by producing unsafe products without regard for environmental protection and other public interests. Continuing coordination with U.S. rights holders on the ground in south China will help us ensure that local officials are hearing a unified message. End Comment.

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